

Endorsement No. 790, dated the 28th November, 1986.

Forwarded (four copies), to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

S. B. AHUJA,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

No. 9/4/87-6Lab./225.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Haryana Roadways, Karnal :—

BEFORE SHRI S. B. AHUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 495/1983

between

SHRI KARAMBIR, WORKMAN, SON OF SHRI MANFOOL, RESIDENT OF VILLAGE
MALI BRAHAMANAN, TEHSIL GOHANA, DISTRICT SONPAT AND THE MANAGE-
MENT OF M/S HARYANA ROADWAYS, KARNAL

Present :

Shri V. K. Modi, for the workman.

Shri S. N. Gaur, for the management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute between Shri Karambir, workman and the management of M/s Haryana Roadways, Karnal to this Tribunal, for adjudication :—

Whether the termination of services of Shri Karambir was justified and in order? If not, to what relief is he entitled?

2. Notices were issued to the parties. Both the parties appeared.

3. The case of the petitioner is that he was appointed on 1st April, 1981 as helper in Haryana Roadways Workshop and worked there up to 30th September, 1982. His grievance is that his services were terminated illegally on 30th September, 1982 without assigning any reason or serving any notice under the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). He alleged that persons junior to him were retained in service at the time of termination of his services. He prayed that he be reinstated with all benefits and back wages.

4. The stand of the petitioner was controverted by the management in its written statement. The management pleaded that the petitioner was appointed on 3rd April, 1981 and worked with them up to 30th September, 1982 with breaks in service. It was pleaded that the petitioner was appointed for a specific period by passing separate orders on daily wages for repair of buses involved in accident. It was specifically mentioned that the term of his appointment came to an end on 30th September, 1982 and as such he was thereafter not retained in service. The management also took the stand that there was no necessity to serve the petitioner with any show cause notice. Hence the management justified its action.

5. On the pleadings of the parties, the following issues were settled by my predecessor :—

(1) Whether the claimant was appointed as casual worker? OPM.

(2) Whether the termination of service of Shri Karambir was justified and in order? If not, to what relief is he entitled? OPM.

6. I have heard Shri V. K. Modi learned authorised representative of the workman and Shri S. N. Gaur, learned authorised representative for the management and have gone through the material on record. My findings on the aforesaid issues are as under :—

Issues No. 1 and 2.

7. Both these issues are interconnected and would be discussed together.

8. The management has examined Shri Karam Chand, Clerk who has proved appointment letters Ex. M-1 to M-6. He deposed that services of the petitioner came to an end on 30th September, 1982 on the expiry of the last term.

9. On the contrary, the workman Karambir came into witness box as WW-1 and deposed that he worked as Helper from 1st April, 1981 to 30th September, 1982 and that his services were terminated without paying him any retrenchment compensation. He also alleged that Prem Sagar, Junior to him was retained in service when his services were terminated.

10. It is well settled that if immediately preceding the date of termination of service, the workman has actually worked for not less than 240 days within a period of 12 months under the employer, he is to be deemed to be in continuous service or for one year under section 25-n (2)(a)(ii) of the Act and such workman would be entitled retrenchment compensation under section 25-F of the Act. There is also no dispute with the proposition that if termination of such a workman is effected without complying with section 25-F of the Act then such order of termination is void *ab initio* which entitling the workman declaration for continuation in service with full back wages.

11. In our instant case, the management has admitted in the written statement that the workman had worked with them for specific period as detailed below :—

- (1) 3rd April, 1981 to 30th April, 1981.
- (2) 1st May, 1981 to 31st May, 1981.
- (3) 1st June, 1981 to 30th June, 1981.
- (4) 1st October, 1981 to 13th October, 1981.
- (5) 1st November, 1981 to 30th November, 1981.
- (6) 1st December, 1981 to 31st December, 1981.
- (7) 1st January, 1982 to 31st January, 1982.
- (8) 1st February, 1982 to 28th February, 1982.
- (9) 1st March, 1982 to 31st March, 1982.
- (10) 1st July, 1982 to 31st July, 1982.
- (11) 1st August, 1982 to 30th September, 1982.

The various appointment letters produced by the management are Ex. M-1 to M-6. Hence in the present case, commencing from the date of termination and counting backward, the petitioner had rendered service for a period of 256 days within a period of 12 months and thus his case falls within section 25-n(2)(a) (ii) and he shall be deemed to be continuous in service for a period of one year for the purpose of Chapter V-A. Admittedly, in this case retrenchment was effected without complying of section 25-F of the Act. Hence termination of services of the workman renders the orders of termination void *ab initio*.

12. It was contended by the management that there was automatic discharge from service under the term of appointment and the workman ceased to be their employee with effect from 30th September, 1982. In other words, it was canvassed that there was no necessity of complying with section 25-F of the Act. Thus the argument of the employer has got no force. Even automatic termination of service on efflux of contractual period amounts to retrenchment for which provisions of section 25-F of the Act are to be complied with.

13. It was immaterial that the workman was a casual or daily wage worker because even a casual or seasonal workman who has rendered continuous service for one year cannot be retrenched on such ground without complying with the requisites of section 25-F of the Act.

14. For foregoing reasons, it is held that termination of services of Shri Karambir, workman is void *ab initio*, illegal and not in order. Hence the workman is entitled to reinstatement with full back wages and continuity of service. The award is passed accordingly in favour of the workman. No order as to costs.

Dated the 25th November, 1986.

S. B. AHUJA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.